

Introduced by Senator Cox

February 22, 2005

An act to ~~add Section 13274.8 to~~ amend Section 25159.24 of the Health and Safety Code, and to amend Sections 13050 and 13267 of, and to add Section 13228.5 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Cox. ~~Urban water suppliers: groundwater recharge~~ Groundwater aquifers: injection wells.

(1) *The Toxic Injection Well Control Act of 1985 exempts from its provisions the use of injection wells for certain purposes.*

This bill would also exempt any injection well used to inject drinking water, as defined.

(2) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of waste in accordance with the national pollutant discharge elimination system (NPDES) permit program under the Clean Water Act ~~(federal act)~~ and the Porter-Cologne Water Quality Control Act ~~(state act)~~.

~~This bill would provide that the discharge of treated water that meets state and federal drinking water standards, by an urban water supplier into a groundwater basin by means of a groundwater recharge facility, is not a discharge of waste for the purposes of the state act exempt from the definition of "waste" drinking water that is percolated, injected, or otherwise conveyed into storage in a groundwater aquifer for later recovery and use. The bill would define "drinking water" for those purposes.~~

This bill would direct the state board and regional boards to encourage projects in which drinking water is injected, percolated, or

otherwise conveyed into groundwater aquifers for later recovery and use by the public. The bill would require any person who proposes to inject, percolate, or otherwise convey drinking water into storage in a groundwater aquifer to file a report, as prescribed, with the regional board in whose region the proposed injection, percolation, or other conveyance would occur. The bill would require the regional board to consider, and within 6 months of the date of filing of a report, to issue a final decision on, a project proposed in the report. The bill would require the regional board to approve the project if it determines the project to be consistent with the applicable water quality control plan. The bill would provide for state board review of a decision of the regional board pursuant to the bill.

The bill would authorize the state board or a regional board to require any person who injects, percolates, or otherwise conveys into storage in a groundwater aquifer, drinking water for later recovery and use in accordance with the above-described provisions, to file a report that demonstrates that any water so injected, percolated, or otherwise conveyed complies with the definition of “drinking water.”

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The use of a groundwater recharge facility,~~
- 2 ~~including aquifer and recovery facilities, is an important means~~
- 3 ~~by which to promote the efficient use of water.~~
- 4 ~~SEC. 2. Section 13274.8 is added to the Water Code, to read:~~
- 5 ~~13274.8. (a) Except as otherwise required by the Clean~~
- 6 ~~Water Act (33 U.S.C. Sec. 1251 et seq.), the discharge of treated~~
- 7 ~~water that meets state and federal drinking water standards, by an~~
- 8 ~~urban water supplier into a groundwater basin by means of a~~
- 9 ~~groundwater recharge facility, is not a discharge of waste for the~~
- 10 ~~purposes of this division.~~
- 11 ~~(b) For the purposes of this section, “groundwater recharge~~
- 12 ~~facility” has the same meaning as that set forth in Section 78670.~~
- 13 ~~(c) For the purposes of this section, “urban water supplier” has~~
- 14 ~~the same meaning as that set forth in Section 10617.~~
- 15 ~~SECTION 1. The Legislature finds and declares all of the~~
- 16 ~~following:~~

1 (a) *An innovative method of meeting California’s fluctuating*
2 *water supply needs is to store in groundwater aquifers water that*
3 *has been treated to a condition that is safe to drink.*

4 (b) *Most groundwater in California, to the extent that it is*
5 *used, is pumped and used for agricultural, domestic, industrial,*
6 *or municipal purposes.*

7 (c) *If water is treated to levels that are safe for drinking, the*
8 *storage of that water in groundwater aquifers will not adversely*
9 *affect the ability of those aquifers to support their current uses.*

10 (d) *In light of California’s need for innovative solutions to*
11 *meet water supply needs, it is the intent of the Legislature to*
12 *encourage the state’s regulatory agencies to promote the storage*
13 *of water treated to drinking water levels in groundwater aquifers*
14 *for later pumping and use.*

15 SEC. 2. *Section 25159.24 of the Health and Safety Code is*
16 *amended to read:*

17 25159.24. (a) Any injection well used to inject contaminated
18 groundwater that has been treated and is being reinjected into the
19 same formation from which it was drawn for the purpose of
20 improving the quality of the groundwater in the formation is
21 exempt from this article if this method is part of a remedial
22 program initiated in response to an order, requirement, or other
23 action of a federal or state agency.

24 (b) Any injection well used for the reinjection of geothermal
25 resources, as defined in Section 6903 of the Public Resources
26 Code, is exempt from this article if the well is in compliance with
27 Chapter 4 (commencing with Section 3700) of Division 3 of the
28 Public Resources Code.

29 (c) *Any injection well used to inject drinking water, as defined*
30 *in Section 13050 of the Water Code, is exempt from this article.*

31 SEC. 3. *Section 13050 of the Water Code is amended to read:*

32 13050. As used in this division:

33 (a) “State board” means the State Water Resources Control
34 Board.

35 (b) “Regional board” means any California regional water
36 quality control board for a region as specified in Section 13200.

37 (c) “Person” includes any city, county, district, the state, and
38 the United States, to the extent authorized by federal law.

39 (d) “Waste” includes sewage and any and all other waste
40 substances, liquid, solid, gaseous, or radioactive, associated with

1 human habitation, or of human or animal origin, or from any
2 producing, manufacturing, or processing operation, including
3 waste placed within containers of whatever nature prior to, and
4 for purposes of, disposal. *“Waste” does not include drinking*
5 *water that is percolated, injected, or otherwise conveyed into*
6 *storage in a groundwater aquifer for later recovery and use.*

7 (e) “Waters of the state” means any surface water or
8 groundwater, including saline waters, within the boundaries of
9 the state.

10 (f) “Beneficial uses” of the waters of the state that may be
11 protected against quality degradation include, but are not limited
12 to, domestic, municipal, agricultural and industrial supply; power
13 generation; recreation; aesthetic enjoyment; navigation; and
14 preservation and enhancement of fish, wildlife, and other aquatic
15 resources or preserves.

16 (g) “Quality of the water” refers to chemical, physical,
17 biological, bacteriological, radiological, and other properties and
18 characteristics of water which affect its use.

19 (h) “Water quality objectives” means the limits or levels of
20 water quality constituents or characteristics which are established
21 for the reasonable protection of beneficial uses of water or the
22 prevention of nuisance within a specific area.

23 (i) “Water quality control” means the regulation of any
24 activity or factor which may affect the quality of the waters of
25 the state and includes the prevention and correction of water
26 pollution and nuisance.

27 (j) “Water quality control plan” consists of a designation or
28 establishment for the waters within a specified area of all of the
29 following:

30 (1) Beneficial uses to be protected.

31 (2) Water quality objectives.

32 (3) A program of implementation needed for achieving water
33 quality objectives.

34 (k) “Contamination” means an impairment of the quality of
35 the waters of the state by waste to a degree which creates a
36 hazard to the public health through poisoning or through the
37 spread of disease. “Contamination” includes any equivalent
38 effect resulting from the disposal of waste, whether or not waters
39 of the state are affected.

1 (l) (1) "Pollution" means an alteration of the quality of the
2 waters of the state by waste to a degree which unreasonably
3 affects either of the following:

4 (A) The waters for beneficial uses.

5 (B) Facilities which serve these beneficial uses.

6 (2) "Pollution" may include "contamination."

7 (m) "Nuisance" means anything which meets all of the
8 following requirements:

9 (1) Is injurious to health, or is indecent or offensive to the
10 senses, or an obstruction to the free use of property, so as to
11 interfere with the comfortable enjoyment of life or property.

12 (2) Affects at the same time an entire community or
13 neighborhood, or any considerable number of persons, although
14 the extent of the annoyance or damage inflicted upon individuals
15 may be unequal.

16 (3) Occurs during, or as a result of, the treatment or disposal of
17 wastes.

18 (n) "Recycled water" means water which, as a result of
19 treatment of waste, is suitable for a direct beneficial use or a
20 controlled use that would not otherwise occur and is ~~therefor~~
21 *therefore* considered a valuable resource.

22 (o) "Citizen or domiciliary" of the state includes a foreign
23 corporation having substantial business contacts in the state or
24 which is subject to service of process in this state.

25 (p) (1) "Hazardous substance" means either of the following:

26 (A) For discharge to surface waters, any substance determined
27 to be a hazardous substance pursuant to Section 311(b)(2) of the
28 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et
29 seq.).

30 (B) For discharge to groundwater, any substance listed as a
31 hazardous waste or hazardous material pursuant to Section 25140
32 of the Health and Safety Code, without regard to whether the
33 substance is intended to be used, reused, or discarded, except that
34 "hazardous substance" does not include any substance excluded
35 from Section 311(b)(2) of the Federal Water Pollution Control
36 Act because it is within the scope of Section 311(a)(1) of that act.

37 (2) "Hazardous substance" does not include any of the
38 following:

1 (A) Nontoxic, nonflammable, and noncorrosive stormwater
2 runoff drained from underground vaults, chambers, or manholes
3 into gutters or storm sewers.

4 (B) Any pesticide which is applied for agricultural purposes or
5 is applied in accordance with a cooperative agreement authorized
6 by Section 116180 of the Health and Safety Code, and is not
7 discharged accidentally or for purposes of disposal, the
8 application of which is in compliance with all applicable state
9 and federal laws and regulations.

10 (C) Any discharge to surface water of a quantity less than a
11 reportable quantity as determined by regulations issued pursuant
12 to Section 311(b)(4) of the Federal Water Pollution Control Act.

13 (D) Any discharge to land which results, or probably will
14 result, in a discharge to groundwater if the amount of the
15 discharge to land is less than a reportable quantity, as determined
16 by regulations adopted pursuant to Section 13271, for substances
17 listed as hazardous pursuant to Section 25140 of the Health and
18 Safety Code. No discharge shall be deemed a discharge of a
19 reportable quantity until regulations set a reportable quantity for
20 the substance discharged.

21 (q) (1) "Mining waste" means all solid, semisolid, and liquid
22 waste materials from the extraction, beneficiation, and processing
23 of ores and minerals. Mining waste includes, but is not limited to,
24 soil, waste rock, and overburden, as defined in Section 2732 of
25 the Public Resources Code, and tailings, slag, and other
26 processed waste materials, including cementitious materials that
27 are managed at the cement manufacturing facility where the
28 materials were generated.

29 (2) For the purposes of this subdivision, "cementitious
30 material" means cement, cement kiln dust, clinker, and clinker
31 dust.

32 (r) "Master recycling permit" means a permit issued to a
33 supplier or a distributor, or both, of recycled water, that includes
34 waste discharge requirements prescribed pursuant to Section
35 13263 and water recycling requirements prescribed pursuant to
36 Section 13523.1.

37 (s) "*Drinking water*" means water that the State Department
38 of Health Services permits to be used for human consumption.

39 SEC. 4. Section 13228.5 is added to the Water Code, to read:

1 13228.5. (a) (1) *The Legislature hereby finds and declares*
2 *that the growing water needs of this state require innovative*
3 *solutions to the problem of storing water when much water is*
4 *available for the later use by the public when less water is*
5 *available.*

6 (2) *In order to address this problem, the Legislature hereby*
7 *further finds and declares it to be the established policy of this*
8 *state to facilitate the use of groundwater aquifers to store water,*
9 *especially drinking water, for later recovery and use.*

10 (3) *In accordance with this policy, the Legislature hereby*
11 *directs the state board and regional boards to encourage*
12 *projects in which drinking water is injected, percolated, or*
13 *otherwise conveyed into groundwater aquifers for later recovery*
14 *and use by the public.*

15 (b) *Any person who proposes to inject, percolate, or otherwise*
16 *convey drinking water into storage in a groundwater aquifer*
17 *shall file with the regional board in whose region the proposed*
18 *injection, percolation, or other conveyance would occur a report*
19 *that includes all of the following:*

20 (1) *The location of the proposed injection, percolation, or*
21 *conveyance.*

22 (2) *A description of the aquifer or aquifers into which the*
23 *drinking water would be injected, percolated, or otherwise*
24 *conveyed.*

25 (3) *A statement of the amount of drinking water that the*
26 *person expects to inject, percolate, or otherwise convey into*
27 *groundwater storage annually.*

28 (4) *A description of the facilities that the person proposes to*
29 *use to inject, percolate, or otherwise convey into groundwater*
30 *storage that drinking water.*

31 (5) *A description of how the person filing the report will*
32 *ensure that the drinking water to be injected, percolated, or*
33 *conveyed into groundwater storage will meet applicable drinking*
34 *water standards at the time of injection.*

35 (6) *A description of the facilities that the person intends to use*
36 *in recovering drinking water that it injects, percolates, or*
37 *otherwise conveys into groundwater storage and the times and*
38 *rates at which that person intends for that recovery to occur.*

39 (7) *An analysis stamped by a registered engineer or*
40 *professional geologist that demonstrates both of the following:*

1 (A) The person's injection, percolation, or conveyance of
2 drinking water into groundwater storage, and subsequent
3 recovery of that drinking water, will not cause changes to
4 groundwater levels in the affected aquifers that would injure
5 other users of that groundwater.

6 (B) The proposed injection, percolation, or conveyance of
7 drinking water into groundwater storage, and subsequent
8 recovery of that drinking water, is consistent with the applicable
9 water quality control plan.

10 (c) The regional board shall consider, and within six months
11 of the date of filing of a report filed under subdivision (b), shall
12 issue a final decision on a project proposed in the report. The
13 regional board shall approve the project if it determines the
14 project to be consistent with the applicable water quality control
15 plan. In considering the project, the regional board shall not
16 determine drinking water to be toxic, detrimental to human
17 health, or detrimental to the agricultural water supply. The
18 regional board shall not disapprove or condition a project on
19 either of the following grounds:

20 (1) The quality of the drinking water is different than the
21 quality of the groundwater into which the drinking water would
22 be injected, percolated, or otherwise injected.

23 (2) The person filing the report under subdivision (b) would be
24 unable to recapture the actual drinking water that it proposes to
25 inject, percolate, or otherwise convey into groundwater storage.

26 (d) If the regional board does not take final action on a report
27 filed under subdivision (b) within six months of the date of its
28 filing with the regional board, the regional board shall be
29 deemed to have approved the project proposed in that report.

30 (e) The person who filed a report under subdivision (b), or any
31 other person who demonstrates a beneficial interest in a project
32 described in that report, may petition the state board to review
33 the regional board's decision on that project, or any condition on
34 the project adopted in that decision, under Section 13320.

35 (f) The state board shall take final action on any review under
36 subdivision (e) within six months of the date of receipt of that
37 petition. If the state board does not take final action on such a
38 petition within six months of the date of its receipt of that
39 petition, the petition shall be deemed denied.

(g) Notwithstanding any other provision of this division, this section shall control the state board's, or a regional board's, consideration of a project described in a report filed under subdivision (b).

(h) Nothing in this section, nor any other provision of law, shall prohibit the recovery from a groundwater basin of the net amount of drinking water percolated, injected, or otherwise conveyed into groundwater storage as part of a project approved under this section, whether or not that basin is overdrafted. For purposes of this subdivision, the term "net amount of drinking water" means the amount by which the project's percolation, injection, or conveyance of drinking water into groundwater storage increases the basin's usable groundwater supplies.

SEC. 5. Section 13267 of the Water Code is amended to read:

13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

(2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in

1 making studies. However, these portions of a report shall be
2 available for use by the state or any state agency in judicial
3 review or enforcement proceedings involving the person
4 furnishing the report.

5 (c) In conducting an investigation pursuant to subdivision (a),
6 the regional board may inspect the facilities of any person to
7 ascertain whether the purposes of this division are being met and
8 waste discharge requirements are being complied with. The
9 inspection shall be made with the consent of the owner or
10 possessor of the facilities or, if the consent is withheld, with a
11 warrant duly issued pursuant to the procedure set forth in Title 13
12 (commencing with Section 1822.50) of Part 3 of the Code of
13 Civil Procedure. However, in the event of an emergency
14 affecting the public health or safety, an inspection may be
15 performed without consent or the issuance of a warrant.

16 (d) The state board or a regional board may require any
17 person, including a person subject to a waste discharge
18 requirement under Section 13263, who is discharging, or who
19 proposes to discharge, wastes or fluid into an injection well, to
20 furnish the state board or regional board with a complete report
21 on the condition and operation of the facility or injection well, or
22 any other information that may be reasonably required to
23 determine whether the injection well could affect the quality of
24 the waters of the state.

25 (e) As used in this section, "evidence" means any relevant
26 evidence on which responsible persons are accustomed to rely in
27 the conduct of serious affairs, regardless of the existence of any
28 common law or statutory rule which might make improper the
29 admission of the evidence over objection in a civil action.

30 (f) *The state board or a regional board may require any*
31 *person who injects, percolates, or otherwise conveys into storage*
32 *in a groundwater aquifer drinking water for later recovery and*
33 *use pursuant to Section 13228.5 to file with that board a report*
34 *that demonstrates that any water so injected, percolated, or*
35 *otherwise conveyed complies with the definition of "drinking*
36 *water" in subdivision (s) of Section 13050.*